

AIR WAR COLLEGE

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**ILLEGAL IMMIGRATION IN THE UNITED STATES:
IMPLICATIONS FOR RULE OF LAW AND NATIONAL SECURITY**

By

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Biography

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Abstract

The federal government's failure to strictly enforce immigration laws presents national security vulnerabilities and is subversive to the rule of law. Without the rule of law, serious social tensions will occur that impel states and localities to fill the void left by the lack of immigration enforcement. In the worst case, citizens themselves will consider taking the law into their own hands when rule of law is not consistently and uniformly applied by a sovereign nation. National security is also negatively impacted by failure to enforce immigration law. This paper explores the impact of drug and human trafficking organizations, transnational gang infiltration, increased terrorist vulnerability, increased violence along the southwest border region and the growing threat of internal separatist movements. To remedy the issue, the federal government needs to overcome political paralysis and muster the will to secure the border and to enforce immigration law throughout the nation.

Introduction

Human migration has occurred since the dawn of man. Freedom of movement was restricted only by one's capability and will to relocate. The rise of the Westphalian state system in the 17th century created a new international order that set forth the idea that nations were sovereign territorial entities whose citizens possessed the right to exercise self-determination and to live under the rule of law. While some international relations theorists suggest a waning usefulness of the Westphalian model in favor of supranationalism, one can assume that the existing state-based framework will serve as the prevailing model for the foreseeable future.

The United States has evolved a mature democratic system that is predicated on the rule of law being the law of the land. One such rule is the Immigration and Nationality Act (INA). This law imposed a third restraint on human freedom of movement; while a non-citizen might possess the will and capability to move to the U.S., prevailing law prevents the unregulated flow of foreign people across its territorial boundary. The INA is the law of the land set out under Title VIII of U.S. Code; but as recent history shows, INA lacks effectiveness based on failure of the federal government to enforce the rule of law.

Since the passage of the original INA, the nation continued to experience a welcomed influx of immigrants. Tens of millions of people entered through legal processes enabling them to become naturalized citizens, but tens of millions also entered illegally thus circumventing the national will geared toward welcoming and assimilating immigrants in a regulated manner. This paper will argue that the federal government's failure to enforce immigration law subverts the rule of law and jeopardizes national security.

Rule of Law

Today we find ourselves at a national crossroads where 87% of U.S. citizens want the federal government¹ to enforce immigration law while the federal government exhibits no political fortitude to execute the will of the people. To create context, it is important to distinguish the scope of illegal immigration from the larger population of foreign born individuals residing in the United States. The table below estimates there are 10.8 million illegal immigrants as determined by the Department of Homeland Security.²

Components of the Unauthorized Immigrant Population: January 2010

	2010
1) Foreign-born population	
a. Foreign-born population, entered 1980–2009, 2009 ACS	29,800,000
b. Adjustment for shift in reference date from July 1, 2009 to January 1, 2010	410,000
c. Undercount of nonimmigrants in ACS	180,000
d. Undercount of other legally resident immigrants (LPRs, recent refugee/asylee arrivals) in ACS	480,000
e. Undercount of unauthorized immigrant population in ACS	1,080,000
f. Estimated foreign-born population, January 1, 2010 (a.+b.+c.+d.+e.)	31,950,000
2) Legally resident population	
g. LPR, refugee, and asylee flow January 1, 1980–December 31, 2009	24,620,000
h. Mortality 1980–2009	1,670,000
i. Emigration 1980–2009	3,590,000
j. LPR, refugee, and asylee resident population, January 1, 2010 (g.–h.–i.)	19,360,000
k. Nonimmigrant population on January 1, 2010	1,800,000
l. Estimated legally resident population, January 1, 2010 (j.+k.)	21,160,000
3) Unauthorized immigrant population	
m. Estimated resident unauthorized immigrant population, January 1, 2010 (f.–l.)	10,790,000

Detail may not sum to totals because of rounding.
Source: U.S. Department of Homeland Security.

Half-hearted efforts by the federal government to secure the border, to conduct interior immigration enforcement, and to address immigration processes and requirements in any meaningful way are all self-inflicted wounds. Illegal immigration lives in a political sine wave that rises to prominence in domestic, foreign and national security policy debates but quickly diminishes in importance as politicians succumb to the complexity of the issue as well as competing domestic and foreign actor influence. The government's perception of illegal immigration debate as a Gordian knot serves to sap political will and creates political paralysis in

crafting meaningful solutions until a system shock causes the issue to regain prominence. The most recent shock to energize immigration debate has been caused by numerous state and local government legal maneuvers to step in and fill the federal void with respect to immigration enforcement. States such as Alabama, Arizona, Mississippi and Utah have enacted legislation to enforce federal immigration law and numerous others have bills pending to address illegal immigration. According to the National Council of State Legislatures, in the first quarter of 2011, legislators in the 50 states and Puerto Rico introduced 1,538 bills and resolutions relating to immigrants and refugees. This number surpasses the first quarter of 2010, when 1,180 bills were introduced.³ The question lies in whether or not the States and localities can generate critical mass to force the federal government to engage. The status quo is rapidly revealing itself to be untenable as the federal government's self-proclaimed role as the sole executor of immigration policy/law butts squarely against the willingness of states and localities to fill the void left by federal inaction.

Assumptions critical to this paper are as follows: 1) The number of illegal immigrants in the United States indicates that current immigration enforcement lacks effectiveness, 2) The United States is a sovereign nation with the right to self-determination and should it muster the political will to address illegal immigration, both rule of law and national security can be reinforced. 3) The solution will not likely lie at the extremes of open borders with amnesty for illegals nor will it lie in neo-isolationism with draconian mass deportations of illegals. The political will to deal with tough challenges and the spirit of democratic compromise to yield a better way forward will not only reinforce American values, it can help mold a more united and secure nation.

Representative Lamar Smith, the ranking member of the House Judiciary Committee crafted an article for *The Washington Times* in March of 2010 where he artfully described the link between illegal immigration and the rule of law/security risks posed by federal inaction. He stated that “the great irony is that American freedoms and the rule of law are often the very reason that many illegal immigrants try to come here. They are literally running from nations historically characterized by an absence of the rule of law...and while we can sympathize with their desire for freedom, we cannot allow them to break down the very institutions that make America free and a beacon to immigrants from around the world. It is by adherence to the founding principles, including the rule of law, that we will continue to be a strong, vibrant America. If we abandon our principles because defending them seems too difficult, we risk making America indistinguishable from the nations that too many immigrants want to leave.”⁴

The debate concerning rule of law seems to center on who has the preponderance of rights. Roman Joch, Executive Director of the Civic Institute in Prague, posits that the genesis of the polarity in views can be traced to political ideology. Generally, a liberal mindset typically yields in favor of a de facto “open borders” policy while a conservative ideology lends itself well to the rule of law approach. He states that “to make a sound judgment on the immigration question, one must understand the following: while the right to emigrate is a basic human right, the right to immigrate is not. Emigration is a right because a human being is not the property of the state or its government.”⁵ However, this does not presuppose that an individual has an automatic right to reside in another nation without the consent of its citizens. Joch summarizes his points by positing that sovereign nations have the right to choose whether or not to “share their country” with any prospective immigrant and choosing not to do so in no way violates a person’s right as a human being. In his view, immigration freedom is double-sided; as “an

immigrant desiring entry and residence in the U.S. must be free to apply just as current American citizens have the freedom to choose whether they wish to have this person as their fellow citizen.”⁶ Joch indicates that under the rule of law construct, immigrants must abide by the law of the land with the government having the right to enforce those laws and that the first act of illegal immigration is a breach of the law and is therefore “not the best way to integrate into a new country,”⁷ his sound argument about primacy of the rule of law then goes awry based on his assumption that reality sometimes renders legal requirements impossible in that “arresting and deporting 14 million illegal immigrants is unrealistic” if not unfeasible.⁸ This leads to his tried and proven untrue recommendation of amnesty.

In 1986, the United States sought to solve the illegal immigrant problem through amnesty. The Immigration Reform and Control Act (IRCA) was designed to sell American citizens on the government’s ability and promise to secure the border and prevent illegal immigration; but in order to do so the nation had to legalize those aliens currently residing here. Mark Krikorian, Executive Director of the Center for Immigration Studies, states that “it would be hard to imagine a system (IRCA) that was more obviously intended to fail.”⁹ He suggests that amnesty is solely a way to help legislators more easily back out of an untenable situation that they helped create through inattention to the original law. Under IRCA, 2.7 million illegal aliens were legalized in concert with a failed effort to provide disincentives to prospective illegal immigrants by eliminating access to the U.S. job and making it unlawful for employers to hire illegal aliens. His assessment that IRCA was destined to fail is based on the federal government’s refusal to require the Immigration and Naturalization Service (INS) to develop a system that employers could use to verify the legal status of prospective employees against Social Security or INS databases. In fact, the federal government was more in favor of having

companies verify legal status themselves through a “bewildering array of easily forged documents” followed closely by threats of Justice Department discrimination lawsuits “if they looked too hard.”¹⁰ The net effect of IRCA was a short-term reduction in illegal crossings while potential immigrants waited to “see if we were serious about enforcement” followed by a drastic increase in illegal immigration “once people figured out that the government was not serious about enforcement and that the new employer based verification system could be easily evaded through the use of inexpensive phony documents.”¹¹ Further, amnesty did not reassure prospective immigrants that following U.S. immigration procedure was the preferred course of action, however it did reinforce the idea that entering illegally provided more immediate benefit.

Why is the rule of law principle important? At its core, rule of law requires that government officials and citizens are bound by and must act consistent with the law. In essence, if laws are not applied consistently to all officials and citizens then the rule of law cannot be satisfied.¹² In any situation where a nation begins to abandon its belief that the rule of law will prevail or if it begins to lose faith that agreed upon laws will be enforced, the fabric of society starts to experience dangerous tensions. The federal government’s failure to uphold immigration law is an illustrative example of how those tensions can be manifested.

A natural, yet concerning outcropping of failure to enforce the law is vigilante justice; essentially citizens or groups of citizens taking matters into their own hands when they believe that law is not being enforced uniformly. The Minuteman Project was created in 2005 by a group of citizens who felt the federal government was failing to execute its duty to uphold U.S. immigration law.¹³ The group assembled with the goal of doing what the federal government would not do; enforce immigration law in an attempt to protect the sovereignty of the nation. The U.S. justice system is inherently against citizens taking the law into their own hands, but this

is a natural tendency when citizens begin to lose faith that the rule of law will be applied and enforced such that they perceive safety and security.

The deluge of recent immigration laws being enacted at the state and local levels is another manifestation of public loss of confidence in the federal government's ability and will to enforce immigration law. In Manassas Virginia local citizens and elected officials started the "Help Save Manassas" movement with the stated goal of passing "legislative action to reduce the number of illegal aliens in our community."¹⁴ The citizens asserted that the federal government was not enforcing immigration law which disadvantaged their safety and security as U.S. citizens. In 2007 they passed a law of their own, aptly named the Rule of Law Resolution, to do the job of immigration enforcement that the federal government was not doing. Current inaction by the federal government must be changed to a policy of active engagement to prevent a growing tendency, on the part of U.S. citizens, to support and resort to the use of "whatever means necessary" to deal with the problem.

A constitutional mandate exists for the federal government to protect the American people against foreign and domestic threats. Citizens should have full faith that the government will fulfill this responsibility by upholding national laws. But is failure to enforce immigration law a threat to our national security? To begin parsing this question, one can begin by examining if the lack of immigration enforcement contributes to the following: border violence fed by drug and human smuggling, terrorist threats, transnational gang infiltration and the rise of separatist organizations and ideologies within the United States.

National Security Implications

Numerous federal agencies have historically protected the border and interior of the nation. The Department of Homeland Security (DHS) was created in the wake of 9/11 to be the primary government action arm charged to protect American citizens. Several sub-agencies under the DHS umbrella play a direct role in enforcing immigration law and ensuring border/interior security. Counter-narcotics, Customs and Border Protection, Citizenship and Immigration Services, and Immigration and Customs Enforcement are some of those agencies. It is important to recognize that threats to national security can manifest themselves at any port of entry; air, land and sea. The focus of this paper is on the land threat largely emanating along the southwest border shared with Mexico. This does not presume that other avenues of entry are not worthy of assessment in their own right.

The porous land border is of significant concern due to an increasing level of violence in the region. Safety and security of U.S. citizens nationwide, and more acutely for citizens living along the border, is held at risk. Perhaps the starker assessment came from Zapata County, Texas Sheriff Sigfredo Gonzalez when he stated that “the feds say our side of the border is safe, but we have bullet holes in our schools and businesses that say otherwise.”¹⁵ A 2006 ABC News piece outlined a 246-page report titled “At the Crossroads: Border Counties in Transition.” The report, conducted by the University of Texas El Paso Institute for Policy and Economic Development, stated that counties bordering Mexico would rank No. 1 in federal crime if they were a state. It further assessed that “the crimes are mostly related to immigration and drugs which makes the future look bleak for the borderlands if something isn't done soon.”¹⁶ Evidence shows that alien smuggling strategies also presents unique vulnerabilities. A Congressional Research Service report assesses that alien smuggling constitutes a significant risk to national

security and public safety. In fact, experts warn that terrorists may use existing smuggling routes, methods and organizations to enter undetected.¹⁷ The CRS report indicates that “in addition to generating billions of dollars in revenues for criminal enterprises, alien smuggling can lead to collateral crimes including kidnapping, homicide, high speed flight, identity theft and the manufacturing/distribution of fraudulent documents.”¹⁸ Poor border security and enforcement can therefore be shown to pose a national security risk to U.S. citizens.

The threat of terrorism in a post-9/11 world is real, and a porous border and ineffective enforcement of immigration law serves only to increase that threat. A Public Broadcasting System *Frontline* report chronicled the capture of terrorist Ahmed Ressam whose testimony that showed how al Qaeda terrorists planned to exploit immigration laws and porous borders to gain access to the United States. The report states “the picture of al Qaeda that is emerging through Ressam's case and ongoing investigations is of a sophisticated terrorist network, able to send “sleeper” agents like Ressam anywhere in the world. Al Qaeda depends on the ability to travel internationally in order to raise funds, recruit and train operatives, and send them out to plan and conduct terrorist attacks. Key to their international mobility is being able to circumvent immigration laws and law enforcement watch lists.”¹⁹ While there is a shortage of open source information concerning terrorists crossing into the United States, an insightful article by investigative reporter Todd Bensman cites several government officials who are concerned about terrorist ability to cross the porous border. Specifically cited are Director of National Intelligence Mike McConnell, deputy Secretary of Homeland Security James Loy and FBI Director Robert Mueller. McConnell asserted in *The El Paso Times* that “terrorists have been caught trying to cross the Mexican border and that these interdictions saved American lives.” Deputy Secretary Loy testified before the U.S. Senate Select Committee on Intelligence in

February 2005 stating that "recent information from ongoing investigations, detentions and emerging threat streams strongly suggests that al-Qaeda leaders believe operatives can pay their way into Mexico and also believe illegal entry is more advantageous than legal entry for operational security reasons." Finally, Director Mueller testified before a Congressional committee in 2006, that a number of Hezbollah terrorists had crossed into the U.S. from Mexico but offered no details. He did offer a follow up in 2007 when he told reporters "We have had indications that leaders of other terrorist groups may be contemplating...having persons come across assuming identities of others, and trying to get across the border. It is intelligence that indicates there have been discussions on that." Bensman adds that when pressed for details, men like Mueller and Loy have to demur, citing official secrecy rules designed to protect investigations while in play, as well as intelligence-gathering methods, confidential informants and sources so as to keep terrorist targets from figuring out how they've been compromised.²⁰ It has been shown that lax enforcement of immigration law poses a national security threat by using just one example of the land border.

Federal government failure to enforce INA is deleterious to national security because it enables transnational gang access to the United States. These gangs are closely tied to Drug Trafficking Organizations (DTOs) and it is big business. To protect their illicit goods and drive up profits, DTOs have increased violence on both sides of the Mexican-American border. Control of drug trafficking corridors yields significant income from "taxation" of drug shipments through the cartel-controlled border plazas. A highly profitable plaza is typically linked to an American sister city (i.e. Laredo/Nuevo Laredo).²¹ While DTO trafficking routes incorporate technology and human intelligence to avoid contact with law enforcement, mere proximity to an American sister city enables cartels to quickly inject illicit drugs into a robust U.S. distribution

network. These “American-side” networks then break the bulk shipments down for easier transport, less risk of seizure, and rapid sale via U.S. transnational gangs such as the Latin Kings and Mara Salvatrucha (MS-13). It is estimated that DTO influence, bolstered by the partnership with the transnational gangs, is present in 230 American cities.²² DTOs and transnational gangs have proven to be resilient, dynamic and learning crime syndicates. This is evidenced by their innovative, adaptive methods to transgress the porous border. DTOs and transnational gangs have a keen ability to be one step ahead of U.S. efforts which enables them to shift crossing points to counter Border Patrol strategy adjustments. Further evidence of DTO and gang adaptability is supported by Senator Diane Feinstein (D-CA) who states “underground tunnels on the southwest border present a serious national security threat... smugglers have gone underground to evade border enforcement. An astonishing 154 tunnels have been discovered since May 1990. On a recent visit to San Diego, I saw a sophisticated tunnel close to half a mile long stretching from an abandoned warehouse to Tijuana, Mexico. Designed with tracks and pulleys, smuggling tunnels are growing along border states to transport drugs, and can be used to transport weapons and people.”²³ There is a clear connection between DTO and transnational gangs and national security threats.

A final threat to national security can be viewed through the lens of cultural assimilation. It can be posited that the mass inflow of illegal immigrants is causing a dramatic shift in American culture due to inability, and in some cases unwillingness to assimilate to the American way of life. Assimilation is based on one’s desire to become American first regardless of birth country. Admittedly this section focuses on a very narrow subset of illegal immigrants, Mexican Latinos, but only in an effort to illustrate the point and not to disregard similar concerns in other ethnic diaspora. This group was chosen due to the fact that Mexican nationals comprise 62% of

the unauthorized resident population.²⁴ It is therefore the most studied ethnic group with respect to integration into American culture. Based on his statistical analysis of Mexican immigration, Edward P. Lazear states that “Latino aliens become assimilated much less rapidly than do other groups.” The 2000 U.S. Census data shows that 49% of Mexican immigrants are fluent in English compared to 80% of non-Mexican immigrants. Lazear further suggests that Mexican immigrants more commonly “concentrate in ethnic enclaves” versus other race groups.²⁵

Fernando Romero, author of *Hyperborder*, states that, between 1990 and 2000, the Latino population present in the United States rose from 22.4 million to 35.3 million, which at a growth rate of 58% far exceeded that of other minority groups and the current ethnic majority group of whites/Caucasians. Further, he states that at current growth rates, “by 2050, Hispanics could represent 25% of the U.S. population and that 11% of all Mexicans will be living in the United States.”²⁶ Samuel Huntington’s *The Clash of Civilizations*, deems migration to be the “central issue of our time.” With respect to the nearly 7 million Mexican aliens in the United States, Huntington suggests that “if one million Mexican soldiers crossed the border, Americans would treat it as a major threat to their national security and react accordingly. The invasion of over 1 million Mexican citizens would be a comparable threat to American societal security, and Americans should react against it with vigor. Mexican immigration is a unique, disturbing and looming challenge to our cultural integrity, our national identity, and potentially to our future as a country.”²⁷ Congressman J.D. Hayworth (R-AZ) wrote in a 2005 article that “Mexico’s Foreign Ministry has produced and distributed a “Guide for the Mexican Migrant,” which is essentially a “how-to” manual for illegal entry into the United States. Unfortunately, the manual goes even further by providing recommendations for illegal aliens in evading detection of federal authorities once inside the United States. Not once does the guide mention how a Mexican

migrant can come to the U.S. legally. Indeed, the problem begins with Mexican President Vicente Fox, who openly encourages more Mexicans to head north, not only breaking our immigration laws but also trampling the spirit of citizenship and assimilation those laws were designed to foster.”²⁸

Research shows that there is a separatist component to the Mexican illegal immigration situation as well. El Plan Espiritual de Aztlán was adopted at the first National Chicano Youth Liberation Conference in Denver, Colorado, March 1969. The grand strategy of the Aztlán movement is to create “a nation autonomous and free, culturally, socially, economically, and politically, that will make its own decisions on the usage of *our lands* (emphasis added), the taxation of our goods, the utilization of our bodies for war, the determination of justice, and the profit of our sweat. El Plan de Aztlán is the plan of liberation!”²⁹ MEChA (Movimiento Estudiantil Chicano de Aztlán) or the Aztlán Chicano Student Movement is an organization operating within the United States whose mission is as follows: “Essentially, we are a Chicana and Chicano student movement directly linked to Aztlán. As Chicanas and Chicanos of Aztlán, we are a nationalist movement of Indigenous Gente that *lay claim to the land that is ours by birthright*. As a nationalist movement we seek to free our people from the exploitation of an oppressive society that occupies *our land*.”³⁰ The geographic boundaries of Aztlán that the MEChA and similar activist groups seek to make independent from the United States is represented below.³¹



Conclusion

The federal government has the tools at its disposal to correct illegal immigration.

Should it muster the political will to enforce the body of law laid out in the INA, our borders and interior can be secured providing improved national security as well as manifesting an overt recommitment to the rule of law principle. Positively addressing the immigration issue will take a truly bipartisan congressional effort and committed leadership from the executive branch.

Taking the path of least resistance in the form of legislative amnesty will only serve to reward further subversion of U.S. immigration law and have a compounding effect on the negative factors outlined in this paper. There can be no doubt that the United States needs *responsible* immigration to feed the lifeblood of this democratic nation; but the current federal government approach in no way resembles a responsible approach. The solution likely lies in a moderate, well thought out strategy that uses a whole of government effort versus extreme options either in the form of open borders or draconian forced deportation.

Adopting a phasing strategy that secures the nation and its sovereign territory, demagnetizes illegal entry/incentivizes legal entry, and reforms citizenship processes can help achieve the goal of responsible immigration. The federal government can enforce immigration law still be the “city on a hill” that prospective immigrants find so appealing. The proposed roadmap places immediate effort on securing the border and removing the incentives associated with illegal immigration.

Any successful attempt to curb illegal immigration must be kick started with the implementation of a national identification card and a redoubled effort to complete the border fence within 6 months to 1 year. Construction would be accomplished by 3 entities: private contract, public works and state-owned (Title 32) National Guardsmen. While the private contractor and military pieces are self-evident, the remaining tool bears further explanation. From a public works perspective, the nation should have a WPA-like (Work Projects Administration) endeavor to put those on public assistance (i.e. Welfare and Unemployment programs) back to work in helping to expedite completion of the border fence.

The government should also seek to eliminate taxpayer assistance to any program that serves as a magnet to illegal aliens and the nation must have a publicized date where full enforcement of INA will be placed in effect so that illegal immigrants can have an opportunity to self-deport and also so employers can adjust to legal workforce sourcing. All efforts should be made to utilize those citizens who are on public assistance to fill those job vacancies. Legislation should be passed that ties reductions in foreign aid to countries that are a source of illegal immigrants. Concurrent to the demagnetization effort, the nation needs to expand its extension of visas to those in math and science (high-tech visas) and greatly improve processes to speed up visa requests for those who are in queue. The system should provide 100% tracking

of those in the country on visas so we can take action when “overstays” occur. To accomplish enforcement actions within existing INA law, partnership must exist between federal, state and local law enforcement; this is where a national identification card becomes vital. *All* citizens should be prepared to show this ID card at appropriate times; voting, traffic stops, etc. The enforcement methodology can be thought of as “easy exit/hard entry” with respect to immigration enforcement. Through attrition, the illegal alien population will be brought down significantly as is proven in states that are working to enforce federal immigration law. Once people know the nation is serious about responsible immigration, the matter will be largely self-correcting. From a foreign policy perspective, the United States should continue to work closely with nations like Mexico to improve intrinsic economic development. Diplomatically, we should send clear signals to countries like Venezuela and Mexico with respect to their unsolicited commentary and interference with U.S. immigration enforcement such that any foreign nations criticize at their own risk.

Lastly, the United States needs to have a process in place to adjudicate Birthright Citizenship such that citizenship is only automatic if one or both parents are U.S. citizens. This will prevent the propagation of the “anchor baby” phenomenon where foreigners come to the U.S. for the purpose of having a child so they can be “tied to the U.S.” by virtue of that child. By incrementally expanding legal immigration options and eliminating incentives to circumvent national law, the nation can grow and preserve a legal workforce, acquire intellect and talent, improve national security, restore rule of law and improve protections for legal residents...both citizens and immigrants. All it takes is the political will in Washington to do what the citizenry wants.

Notes

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